IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.Rev.Pet.No. 2273 of 2003-A

CRA.406/2000 of IST ADDL.SESSIONS COURT, KOZHIKODE
CC.1161/1998 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

REVN. PETITIONER: APPELLANT/ACCUSED

PUTHUKUDI ABDURAHIMAN @
MUHAMMED ABDURAHIMAN, S/O.ABOOBACKER HAJEE,
AGED 44 YEARS, PUTHUKUDY HOUSE,
KIZHAKKOTH AMSOM DESOM, KOZHIKODE TALUK AND DIST.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: RESPONDENTS/COMPLAINAT AND STATE

1. P.K.VIJAYAN, S/O.GOVINDAN,
"SOUPARNIKA', KUNIYIL PARAMBU,
CHERODU AMSOM DESOM, VADAKARA.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.C.D.SHAJU
SMT.THUSHARA.V
PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15-2-2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.M.A.NO. 9151/2003
IN CRL.R.P.NO. 2273/2003-A

DISMISSED.

15-2-2007

SD/-K.R.UDAYABHANU, JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.2273 of 2003-A

DATED THIS THE 15TH DAY OF FEBRUARY 2007

ORDER

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay fine of Rs.5,000/- and in default to undergo simple imprisonment for two months. The case of the complainant is that two cheques for Rs.25,000/-each dated 15-2-1997 and 5-3-1997 issued towards the discharge of liability were dishonoured for want of funds in the account of the accused. The contention raised before the courts below was that notice was not served and hence the mandatory statutory formalities under Section 138 has not been complied with. It is the case of the complainant that the amount was borrowed by the accused and subsequently he promised him to procure a visa. I find that no contra evidence has been adduced to rebut the statutory presumptions. In the circumstances, I find no reason to interfere in the findings of the courts below.

All the same considering the plea of the counsel for the petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a sum of Rs.50,000/- to the complainant under

Section 357(3)Cr.P.C. less the amount already deposited, if any, and in default to undergo simple imprisonment for three months. The petitioner shall appear before the Judicial First Class Magistrate, Vadakara on 16-3-2007 to receive the sentence. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.